IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 284 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DAHYABHAI MOHANBHAI DABHI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 284 of 1997

MR JA ADESHRA for Petitioner No. 1

MR KG SHETH, Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 09/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant was accused No.1 in Sessions Case No.129 of 1992 before the learned Additional Sessions Judge, Nadiad, who by his judgement and order dated 31-1-1997 found him guilty of the offence punishable under Section 302 and sentenced him to life-imprisonment.

2. In all there were four accused including the appellant. The other accused, namely, accused No.2 to 4 were his brothers. The charge against them was that the accused No.2 held the deceased Bhikhabhai by his arms and accused No.1 gave a knife blow on his chest. It was also alleged that accused No.3 and 4 pushed back Sukhiben and Vilasben, who were going to the rescue of Bhikhabhai. The incident is alleged to have occurred in the evening at 5.45 on 14.11.1991 in Village Chitrasar, Taluka Matar, District Kheda. The accused No.2, 3 and 4 were charged with the offence under Section 302 read with Section 34, while accused No.1 was charged with the offence under Section 302 of IPC. Subsequently, charge for the offence under Section 3(1)(11) and 3(2)(5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was also added. The learned trial Judge at the end of the trail found only the appellant, who was accused No.1, guilty of offence punishable under Section 302 and acquitted the appellant and other accused of the other charges. The appellant has, therefore, filed this appeal, challenging the conviction and sentence for the offence under Section 302. There is no appeal against the acquittal. Hence we are concerned only with the appeal against the conviction.

3. The prosecution story is to be found in the evidence of two witnesses, namely, Vilasben (PW-5), who was the wife of the deceased Bhikhabhai and Sukhiben (PW-3), who was the mother of deceased Bhikhabhai.

4. The evidence of Vilasben shows that they were employed as labourers. On the day of the incident, Vilasben along with her husband and her sister-in-law Manju had gone to work in the field of Kukabhai Bharvad. While she and her husband were working, her mother-in-law, Sukhiben brought meals, which they ate. They rested for some time after taking their meals. Then she went to answer the call of nature near the water-course. At that time, Dahyabhai Mohanbhai Dabhi, the appellant was coming in his cart. He caught her hand. So she raised shouts. Her mother-in-law and her husband came there running. At that time, the appellant had given threats to her husband. In the evening at about 5.30 they were going back home. When they came

near the shop of Jayantibhai, accused No.2 held arms of her husband and appellant No.1, Dahyabhai gave him a knife blow on the chest. When she and her mother-in-law tried to come to his rescue, accused No.3 and 4 knocked them down. At that time, Jaksibhai Ramabhai Bharwad was coming there and on seeing him all the four accused ran away. Jaksibhai had also shouted at them. Then Bhikhabhai was carried in a tractor, but he died on way to Nayka. Hence his body was brought back. Jaksibhai then went to lodge a complaint with the Police. Vilasben also identified the accused in the Court. In the cross-examination, she said that she had come to know the names of the accused only after the incident. It was also alleged that the deceased had divorced his earlier wife and subsequently remarried Vilasben, but that is hardly relevant. In the cross-examination on behalf of accused No.2 to 4, it was alleged that she had squatted near the water-course for answering the call of nature and many people passed along the place. She denied that Dahyabhai had scolded her for squatting at the place. She admitted that when Dahyabhai came nearby, she felt that he would molest her and, therefore, she raised shouts. She also admitted that Dahyabhai stood there till her husband came there. She told her husband that Dahyabhai was making advances towards her. She had admitted that Dahyabhai told her husband that he had not done anything of that sort. Then, she said that there were altercations between Dahyabhai and her husband. She also admitted that Dahyabhai had given kicks and blows to her husband.

5. According to the prosecution, the complainant Jaksibhai was an eye-witness, but he did not support the prosecution case and said that he had only heard that there had been quarrels between Dahyabhai and Bhikhabhai and he only admitted that there was altercation between Dahyabhai and Bhikhabhai. He was declared hostile. Sukhiben, the mother of the deceased, has given more or less the same evidence as Vilasben. However, in her cross-examination, it is brought out that she had not stated before the police that Vilasben went to answer the call of nature and the appellant went after her and caught her arm and that there was a scuffle between the appellant and Bhikhabhai. Hence it appears that she must not have been an eye-witness to the earlier part of the incident when there was a scuffle between Dahyabhai and Bhikhabhai. However, she was an eye-witness to the incident in which Dahyabhai gave a knife blow to the deceased Bhikhabhai near the shop of Jayantibhai. According to the prosecution, the knife in question was found in the house of accused No.3 at the instance of the

appellant. However, the panchas have not supported the prosecution and though the Investigating Officer has deposed to the discovery of the knife, which was produced and sent to F.S.L. for examination and human blood was found on it, the group could not be determined. In the facts and circumstances of the case, the discovery of the knife is a weak piece of evidence and not much reliance can be placed on it.

6. The evidence of Dr.Shakrabhai Mohanbhai (PW-1), who conducted the post-mortem examination shows that there was a stab wound on the right side of the chest and the death was due to haemorrhagic shock by injury to the right pulmonary artery. He also said that the injury was sufficient to cause death in the ordinary course of nature and it could have been caused by a knife.

7. The learned Advocate for the appellant submitted that Vilasben and Sukhiben are highly interested witnesses and looking to the overall facts and circumstances their presence at the time of the incident is highly doubtful. The said witnesses had falsely involved accused 2, 3 and 4 and, therefore, they have been acquitted and no reliance can be placed on their evidence with regard to accused No.1. He further submitted that the prosecution had tried to base their case on the previous incident, which was a trivial one and no person would ever commit an offence of murder for such a trivial incident. He also submitted that the Investigating Officer admitted in his cross-examination that it came out in the cross-examination that there were eye-witnesses, but they were not examined.

8. We have closely scrutinised the evidence of Vilasben, who was the wife of the deceased Bhikhabhai. While appreciating the evidence of such witnesses, we should not forget that they were illiterate labourers, and that they cannot be expected to be very articulate while giving their evidence. Vilasben has told the story in a natural manner and there is no reason to believe that she would have invented such a story to implicate the appellant falsely and let off the real culprit. Nothing is suggested as to why she should falsely implicate the appellant. It is a matter of common experience that in such cases other people, who have no connection with the victim, are unwilling to get themselves involved and give evidence. When the learned APP, who conducted the prosecution case, gave a purshis for closing the evidence, no objection was taken on behalf of the appellant. In the circumstances, failure to cross-examine other alleged independent eye-witnesses

does not detract from the value of evidence of Vilasben. The learned Advocate for the appellant also submitted that there was no consistency with regard to the time and place of the incident. However, as we have stated earlier, when illiterate, village labourers give evidence, they cannot be expected to be very consistent in all particulars. There is no reason to doubt the version as given by Vilasben in so far as it implicates the appellant as the person, who gave the fatal blow to Bhikhabhai. Once the evidence of Vilasben is believed, it follows that it was the appellant who gave the knife blow on the chest of Bhikhabhai which resulted in his death.

9. The learned Advocate for the appellant then submitted that there was no intention on the part of the appellant to cause death of Bhikhabhai and at most the offence would be under Section 304 (Part-II). However, as the evidence stands, there is no escape from the conclusion that the blow was intentional and it was sufficient in ordinary course of nature to cause death. There is no circumstance on record to bring the case under any of the exceptions to Section 300. Hence, it is not possible to accept the contention that the offence would be under Section 304 (Part-II). We, therefore, confirm the finding of the learned Additional Sessions Judge that the appellant was guilty of the offence punishable under Section 302 of IPC. The appeal, therefore, fails and is accordingly dismissed.

9-4-2002 (M.C.Patel, J.)

(A.L.Dave, J.)

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